

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: _____

TIM IOANNIDES, M.D.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant.

_____ /

COMPLAINT

COMES NOW Plaintiff, TIM IOANNIDES, M.D. (hereinafter "Plaintiff"), by and through his undersigned counsel, hereby sues the United States Department of Justice (hereinafter "DOJ" or "Defendant"), and states:

1. This is an action under the Freedom of Information Act (hereinafter "FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief. Plaintiff seeks the immediate processing and release of agency records from DOJ.

THE PARTIES

2. Plaintiff, Dr. Tim Ioannides, is a citizen of Florida residing within the jurisdiction of the United States District Court for the Southern District of Florida.

3. Defendant, Department of Justice, is an agency of the United States.

4. The Executive Office for United States Attorneys (hereinafter "EOUSA") is a component of the DOJ. The EOUSA and or other components of the DOJ have possession, custody and control of the records Plaintiff seeks.

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JURISDICTION AND VENUE

5. This action arises under the Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act of 1974 (hereinafter “PA”), 5 U.S.C. § 552a.

6. This court has jurisdiction over the parties and subject matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(1)(B).

7. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

STATEMENT OF FACTS

BACKGROUND

8. On August 31, 2015, a *qui tam* action was filed in the United States District Court for the Southern District of Florida, captioned *United States, ex rel. v. Tim Ioannides, M.D., et al*, Case No. 15-14306, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b)(2) (the “Civil Action”).

9. On March 7, 2018, the Civil Action was terminated by entry of an Order of Dismissal.

PLAINTIFF’S FOIA/PA REQUEST

10. On September 21, 2018, Plaintiff, by and through undersigned counsel, submitted a FOIA/PA request to the DOJ via the FOIA online portal, requesting a copy of the complete file pertaining to the Civil Action. Plaintiff’s FOIA/PA request was submitted with a copy of the Complaint from the Civil Action and a properly executed Certification of Identity (Form DOJ-361) attached.

11. In an email sent to Plaintiff’s counsel the same day, FOIA online acknowledged receipt of Plaintiff’s FOIA/PA request described in the previous paragraph and assigned it

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tracking number EOUSA-2018-005852. The acknowledgment of Plaintiff's FOIA/PA request from the DOJ was emailed on October 15, 2018.

DOJ's RESPONSE TO THE REQUEST

12. In a letter sent to Plaintiff's counsel dated April 5, 2019, the DOJ released-in-part and denied-in-part Plaintiff's FOIA/PA request.

13. According to the letter, the DOJ reviewed approximately 92 pages of materials. Of those materials only 5 pages were released in full. The remaining 87 pages were withheld in their entirety.

14. The only explanation provided to justify withholding the 87 pages was that "certain documents are under seal."

PLAINTIFF'S APPEAL OF PARTIAL DENIAL

15. On April 29, 2019, Plaintiff, by and through undersigned counsel, submitted an appeal through the FOIA online portal appealing the withholding of documents responsive to his FOIA/PA request.

16. In an email sent to Plaintiff's counsel the same day, FOIA online acknowledged receipt of Plaintiff's appeal and assigned it tracking number DOJ-AP-2019-004277. No separate acknowledgment of has been received by Plaintiff or his counsel from the DOJ, though the FOIA online portal states that the appeal is in the "Assignment" phase.

DOJ's FAILURE TO TIMELY RESPOND TO PLAINTIFF'S APPEAL

17. To date, DOJ has not responded to Plaintiff's appeal nor requested an additional time to respond, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

18. Plaintiff has exhausted the applicable administrative remedies with respect to its

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request to DOJ.

19. DOJ has wrongfully withheld the requested records from Plaintiff.

COUNT I: VIOLATION OF FOIA/PA

20. This Count realleges and incorporates by reference all of the preceding paragraphs.

21. Defendant has violated FOIA and PA by improperly withholding records responsive to Plaintiff's FOIA/PA request (request tracking number: EOUSA-2018-005852; Appeal Tracking number: DOJ-AP-2019-004277).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA/PA request and otherwise order Defendant to produce the requested records without further delay;

B. Provide for expeditious proceedings in this action;

C. Award Plaintiff his attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(i) and 5 U.S.C. § 552a(g)(3)(B); and

D. Grant Plaintiff such other and further relief that the Court deems proper.

Dated: June 13, 2019.

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Respectfully submitted,

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